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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/613,483	07/03/2003	Alan Edward Palmer	F7713(V)	5958

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EXAMINER

MCCORMICK EWOLDT, SUSAN BETH

ART UNIT PAPER NUMBER

1661

DATE MAILED: 08/03/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.		Applicant(s)	
	10/613,483		PALMER ET AL.	
	Examiner		Art Unit	
	S. B. McCormick-Ewoldt		1661	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 June 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date. _____ | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on June 21, 2006 has been entered.

Status of Application

The Art Unit location of your application in the PTO has changed. To aid in correlating any papers for this application, all further correspondence regarding this application should be directed to Group Art Unit 1661.

Claims Pending

Claims 1-17 are pending. Claims 1-17 will be examined on the merits.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Maxwell *et al.* (US 6,063,432) in view of Cook *et al.* (US 4,451,488) further in view Heidlas *et al.* (US 6,288,130).

Maxwell *et al.* discloses a health bar comprising soy protein with at least 25% wt. in the form of solids (column 2, lines 43-53) which supplying the major source of protein to the healthy bar, using a reducing sugar i.e. listed as mannitol that may be substituted (column 2, lines 65-67). In addition, Maxwell *et al.* includes minerals such as zinc, copper, manganese, chromium and

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iron (column 3, lines 14-15). As disclosed in the specification, encapsulated minerals refers to edible waxes, proteins (whey protein, vegetable proteins from soy i.e. isolated soy proteins), fibres and carbohydrates (sugar alcohols starches) (see page 12-13) which are inherent to the ingredients that Maxwell *et al.* disclose.

Maxwell *et al.* does not disclose wherein the soy protein being in nugget form or wherein the use of glycerol as a humectant or wherein the A_w is of 0.45 or less.

Cook *et al.* discloses the use of glycerol (which acts a humectant) in a food bar, within the 3% range wt. and A_w between .2 to about 0.55 (see abstract, column 2 lines 40-42 and claims 1, 3 and 6).

Heidlas *et al.* (US 6,288,130) discloses that glycerol is a polyol of diols and triols and that glycerol can be used safely in food (column 3, lines 46-51).

One of ordinary skill in the art would have been motivated to combine soy protein, glycerol and transition metals into a nutrition bar because the combination of these ingredients into a nutrition bar would have assured a suitable 'packaging' or delivery of the product. It was clear from the Maxwell reference a health bar comprising soy protein solids, a reducing sugar (i.e. mannitol used a humectant) and minerals such as zinc, copper, manganese, chromium and iron. It was further clear from the Cooke reference that glycerol can be used in a food bar and the A_w being between .2 to about 0.55. It was further clear from the Heidlas reference that glycerol is a diol and triol polyol and can be used in food. Although none of the references disclose that soy protein in the form of a nugget, Maxwell discloses that the soy protein would be in a solid form. Therefore, one of ordinary skill in the art would have had a reasonable expectation to use soy protein in a solid form because of ease of handling, to use a humectant, preferably glycerol and transition metals to be combined in a nutrition bar which would have assured a suitable suitable 'packaging' or delivery of the product.

These references show that it was well known in the art at the time of the invention to use the soy protein, glycerol and transition metals in nutrition bars. It is well known that it is *prima facie* obvious to combine two or more ingredients each of which is taught by the prior art to be useful for the same purpose in order to form a third composition which is useful for the same purpose. The idea for combining them flows logically from their having been used individually in the prior art. *In re Pinten*, 459 F.2d 1053, 173 USPQ 801 (CCPA 1972); *In re Susi*, 58 CCPA

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1074, 1079-80; 440 F.2d 442, 445; 169 USPQ 423, 426 (1971); *In re* Crockett, 47 CCPA 1018, 1020-21; 279 F.2d 274, 276-277; 126 USPQ 186, 188 (1960).

Based on the disclosure by these references that soy protein, glycerol and transition metals are used in nutrition bars, an artisan of ordinary skill would have a reasonable expectation that a combination of the substances would also be useful in creating nutrition bars. Therefore, the artisan would have been motivated to combine the claimed ingredients into a single composition. No patentable invention resides in combining old ingredients of known properties where the results obtained thereby are no more than the additive effect of the ingredients. See *In re* Sussman, 1943 C.D. 518; *In re* Huellmantel 139 USPQ 496; *In re* Crockett 126 USPQ 186.

Variations of components in nutritional compositions are well known in the art. It would have been obvious to one of ordinary skill in the art at the time Applicants' invention was made to determine all operable and optimal concentrations of components because concentration is an art-recognized result-effective variable which would have been routinely determined and optimized in the food industry art. Further, one of ordinary skill in the art would have been motivated to have modified the proportions of active ingredients in the composition in order to enable the content of the preparation to be matched with demands and needs of the food industry. Such variations in amounts of nutritionally active ingredients are considered merely optimization of result effective variables, conventional practice in the art of food industry.

From the teachings of the references, it is apparent that one of ordinary skill in the art would have had a reasonable expectation of success in producing the claimed invention. Therefore, the invention as a whole was *prima facie* obvious to one of ordinary skill in the art at the time the invention was made, as evidenced by the references.

Summary

No claim is allowed.

Correspondence

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Susan B. McCormick-Ewoldt whose telephone number is (571)

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272-0981. The Examiner can normally be reached Monday through Thursday from 6:00 a.m. to 4:30 p.m.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiners' supervisor, Anne Marie Grunberg, can be reached at (571) 272-0975. The official fax number for the group is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

sbme

A handwritten signature in black ink, appearing to read 'CHRISTOPHER R. TATE', with a stylized, looping flourish.

CHRISTOPHER R. TATE
PRIMARY EXAMINER